

MT LEGISLATIVE HISTORY

Chapter 269 19 87

Bill H _____ S 186

Original bill & hist. ✓C

H. Committee on Business & Labor

S. Committee on Business & Industry

Hearing Date(s) MAR 10 ✓C

Hearing Date(s) JAN 28 ✓C

MAR 13 ✓C

_____ C

_____ C

_____ C

_____ C

_____ C

Date Out MAR 13 ✓C

JAN 28 ✓C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

SENATE BILL NO. 186

INTRODUCED BY B. WILLIAMS, MEYER, TVEIT, HALLIGAN

BY REQUEST OF THE STATE AUDITOR AND
SECURITIES COMMISSIONER

IN THE SENATE

JANUARY 21, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
JANUARY 29, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 30, 1987	PRINTING REPORT.
FEBRUARY 2, 1987	SECOND READING, DO PASS.
FEBRUARY 3, 1987	ENGROSSING REPORT.
FEBRUARY 4, 1987	THIRD READING, PASSED. AYES, 49; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 11, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
MARCH 13, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 17, 1987	SECOND READING, CONCURRED IN.
MARCH 18, 1987	THIRD READING, CONCURRED IN. AYES, 94; NOES, 0.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 20, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 21, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 ~~Senate~~ BILL NO. 186
2 INTRODUCED BY B. Muller - Meyer
3 BY REQUEST OF THE STATE AUDITOR AND
4 SECURITIES COMMISSIONER

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
7 REGISTRATION OF AN INVESTMENT ADVISER REPRESENTATIVE; AND
8 AMENDING SECTIONS 30-10-103, 30-10-110, 30-10-201, AND
9 30-10-209, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 30-10-103, MCA, is amended to read:

13 "30-10-103. Definitions. When used in parts 1 through
14 3 of this chapter, unless the context requires otherwise,
15 the following definitions apply:

16 (1) "Commissioner" means securities commissioner of
17 this state.

18 (2) "Salesman" means any individual other than a
19 broker-dealer who represents a broker-dealer or issuer in
20 effecting or attempting to effect sales of securities. A
21 partner, officer, or director of a broker-dealer or issuer
22 is a salesman only if he otherwise comes within this
23 definition. "Salesman" does not include an individual who
24 represents an issuer in:

25 (a) effecting a transaction in a security exempted by

1 subsections (1), (2), (3), (9), (10), (11), or (12) of
2 30-10-104;

3 (b) effecting transactions exempted by 30-10-105; or

4 (c) effecting transactions with existing employees,
5 partners, or directors of the issuer if no commission or
6 other remuneration is paid or given directly or indirectly
7 for soliciting any person in this state.

8 (3) "Broker-dealer" means any person engaged in the
9 business of effecting transactions in securities for the
10 account of others or for his own account. "Broker-dealer"
11 does not include:

12 (a) a salesman, issuer, bank, savings institution,
13 trust company, or insurance company; or

14 (b) a person who has no place of business in this
15 state if he effects transactions in this state exclusively
16 with or through the issuers of the securities involved in
17 the transactions, other broker-dealers, or banks, savings
18 institutions, trust companies, insurance companies,
19 investment companies as defined in the Investment Company
20 Act of 1940, pension or profit-sharing trusts, or other
21 financial institutions or institutional buyers, whether
22 acting for themselves or as trustee.

23 (4) "Registered broker-dealer" means a broker-dealer
24 registered pursuant to 30-10-201.

25 (5) "Guaranteed" means guaranteed as to payment of

1 principal, interest, or dividends.

2 (6) "Investment adviser" means any person who, for
3 compensation, engages in the business of advising others,
4 either directly or through publications or writings, as to
5 the value of securities or as to the advisability of
6 investing in, purchasing, or selling securities or who, for
7 compensation and as a part of a regular business, issues or
8 promulgates analyses or reports concerning securities.
9 "Investment adviser" does not include:

10 (a) an investment adviser representative;

11 (a)(b) a bank, savings institution, trust company, or
12 insurance company;

13 (b)(c) a lawyer, accountant, engineer, or teacher
14 whose performance of these services is solely incidental to
15 the practice of his profession;

16 (c)(d) a broker-dealer;

17 (d)(e) a publisher of any bona fide newspaper, news
18 magazine, or business or financial publication of general,
19 regular, and paid circulation;

20 (e)(f) a person whose advice, analyses, or reports
21 relate only to securities exempted by 30-10-104(1);

22 (f)(g) a person who has no place of business in this
23 state if his only clients in this state are other investment
24 advisers, broker-dealers, banks, savings institutions, trust
25 companies, insurance companies, investment companies as

1 defined in the Investment Company Act of 1940, pension or
2 profit-sharing trusts, or other financial institutions or
3 institutional buyers, whether acting for themselves or as
4 trustees; or

5 (g)(h) such other persons not within the intent of
6 this subsection (5) (6) as the commissioner may by rule or
7 order designate.

8 (7) (a) "Investment adviser representative" means any
9 partner of, officer of, director of, or a person occupying a
10 similar status or performing similar functions, or other
11 individual employed by or associated with an investment
12 adviser, except clerical or ministerial personnel, who:

13 (i) makes any recommendation or otherwise renders
14 advice regarding securities;

15 (ii) manages accounts or portfolios of clients;

16 (iii) determines which recommendation or advice
17 regarding securities should be given;

18 (iv) solicits, offers, or negotiates for the sale or
19 sells investment advisory services; or

20 (v) supervises employees who perform any of the
21 foregoing.

22 (b) "Investment adviser representative" does not
23 include an individual registered as a salesman pursuant to
24 30-10-201.

25 (7)(8) "Issuer" means any person who issues or

proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or, with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

~~(8)~~(9) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

~~(9)~~(10) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

~~(10)~~(11) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

~~(11)~~(12) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

~~(12)~~(13) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or

1 lease or in payments out of production under such a title or
 2 lease; or, in general, any interest or instrument commonly
 3 known as a security or any certificate of interest or
 4 participation in, temporary or interim certificate for,
 5 receipt for, guarantee of, or warrant or right to subscribe
 6 to or purchase any of the foregoing. "Security" does not
 7 include any insurance or endowment policy or annuity
 8 contract under which an insurance company promises to pay a
 9 sum of money either in a lump sum or periodically for life
 10 or some other specified period.

11 ~~(13)~~(14) "State" means any state, territory, or
 12 possession of the United States, as well as the District of
 13 Columbia and Puerto Rico."

14 Section 2. Section 30-10-110, MCA, is amended to read:

15 "30-10-110. Scope. (1) Sections 30-10-201(1),
 16 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to
 17 persons who sell or offer to sell when an offer to sell is
 18 made in this state or an offer to buy is made and accepted
 19 in this state.

20 (2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303
 21 apply to persons who buy or offer to buy when an offer to
 22 buy is made in this state or an offer to sell is made and
 23 accepted in this state.

24 (3) For the purpose of this section, an offer to sell
 25 or buy is made in this state, whether or not either party is

1 then present in this state, when the offer either originates
 2 from this state or is directed by the offeror to this state
 3 and received at the place to which it is directed or at any
 4 post office in this state in the case of a mailed offer, but
 5 for the purpose of 30-10-202, an offer to sell which is not
 6 directed to or received by the offeree in this state is not
 7 made in this state.

8 (4) For the purpose of this section, an offer to buy
 9 or sell is accepted in this state when acceptance is
 10 communicated to the offeror in this state and acceptance has
 11 not previously been communicated to the offeror, orally or
 12 in writing, outside this state. Acceptance is communicated
 13 to the offeror in this state, whether or not either party is
 14 then present in this state, when the offeree directs it to
 15 the offeror in this state, reasonably believing the offeror
 16 to be in this state, and it is received at the place to
 17 which it is directed or at any post office in this state in
 18 the case of a mailed acceptance.

19 (5) An offer to sell or to buy is not made in this
 20 state when:

21 (a) the publisher circulates or there is circulated on
 22 his behalf in this state any bona fide newspaper or other
 23 publication of general, regular, and paid circulation which
 24 is:

25 (i) not published in this state; or

(ii) published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers and investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state."

Section 3. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers, and investment adviser representatives. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser or as an investment

adviser representative unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser representative may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. Payment of the waiver fee shall be as prescribed in 30-10-209. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements

1 prescribed by the Securities Exchange Act of 1934 and by
2 regulations adopted under it, may, in the discretion of the
3 commissioner, be required to file with the commissioner a
4 bond of a surety company duly authorized to transact
5 business in this state. The bond shall be in an amount
6 determined by the commissioner, payable to the state of
7 Montana and conditioned upon the faithful compliance with
8 the provisions of parts 1 through 3 of this chapter, and
9 provide that upon failure to so comply, the salesman shall
10 be liable to any and all persons who may suffer loss by
11 reason thereof.

12 (5) The application shall contain whatever information
13 the commissioner requires.

14 (6) When the registration requirements are complied
15 with, the commissioner shall approve the registration.

16 (7) Registration of a broker-dealer, salesman, or
17 investment adviser, or investment adviser representative
18 shall be effective until December 31 following such
19 registration or such other time as the commissioner may by
20 rule adopt and may be renewed.

21 (8) The registration of a salesman is not effective
22 during any period when he is not associated with an issuer
23 or a registered broker-dealer specified in his application.
24 When a salesman begins or terminates a connection with an
25 issuer or registered broker-dealer, the salesman and the

1 issuer or broker-dealer shall promptly notify the
2 commissioner.

3 (9) The registration of an investment adviser
4 representative is not effective during any period when he is
5 not associated with an investment adviser registered under
6 this act and specified in the application. When an
7 investment adviser representative begins or terminates a
8 connection with an investment adviser, the investment
9 adviser and the investment adviser representative shall
10 promptly notify the commissioner.

11 ~~(8)~~ (10) Registration of a broker-dealer, salesman, or
12 investment adviser, or investment adviser representative may
13 be renewed by filing prior to the expiration thereof an
14 application containing such information as the commissioner
15 may require to indicate any material change in the
16 information contained in the original application or any
17 renewal application for registration as a broker-dealer,
18 salesman, or investment adviser, or investment adviser
19 representative filed by the applicant, payment of the
20 prescribed fee, and, in the case of a broker-dealer who is
21 not a member of NASD, inc., by filing a financial statement
22 showing the financial condition of such broker-dealer as of
23 a date within 90 days. A registered broker-dealer or
24 investment adviser may file an application for registration
25 of a successor, to become effective upon approval of the

1 commissioner.

2 {9}(11) Every registered broker-dealer and investment
3 adviser shall make and keep such accounts and other records,
4 except with respect to securities exempt under 30-10-104(1),
5 as may be prescribed by the commissioner. All records so
6 required shall be preserved for 3 years unless the
7 commissioner prescribes otherwise for particular types of
8 records. All the records of a registered broker-dealer or
9 investment adviser are subject at any time or from time to
10 time to such reasonable periodic, special, or other
11 examinations, within or without this state, by
12 representatives of the commissioner, as the commissioner
13 considers necessary or appropriate in the public interest or
14 for the protection of investors.

15 {10}(12) The commissioner may by order deny, suspend,
16 or revoke registration of any broker-dealer, salesman, or
17 investment adviser, or investment adviser representative if
18 he finds that the order is in the public interest and that
19 the applicant or registrant or, in the case of a
20 broker-dealer or investment adviser, any partner, officer,
21 or director:

22 (a) has filed an application for registration under
23 this section which, as of its effective date or as of any
24 date after filing in the case of an order denying
25 effectiveness, was incomplete in any material respect or

1 contained any statement which was, in the light of the
2 circumstances under which it was made, false or misleading
3 with respect to any material fact;

4 (b) has willfully violated or willfully failed to
5 comply with any provision of parts 1 through 3 of this
6 chapter or a predecessor law or any rule or order under
7 parts 1 through 3 of this chapter or a predecessor law;

8 (c) has been convicted of any misdemeanor involving a
9 security or any aspect of the securities business or any
10 felony;

11 (d) is permanently or temporarily enjoined by any
12 court of competent jurisdiction from engaging in or
13 continuing any conduct or practice involving any aspect of
14 the securities business;

15 (e) is the subject of an order of the commissioner
16 denying, suspending, or revoking registration as a
17 broker-dealer, salesman, or investment adviser, or
18 investment adviser representative;

19 (f) is the subject of an order entered within the past
20 5 years by the securities administrator of any other state
21 or by the federal securities and exchange commission denying
22 or revoking registration as a broker-dealer, salesman, or
23 investment adviser, or investment adviser representative or
24 the substantial equivalent of those terms as defined in
25 parts 1 through 3 of this chapter or is the subject of an

1 order of the federal securities and exchange commission
 2 suspending or expelling him from a national securities
 3 exchange or national securities association registered under
 4 the Securities Exchange Act of 1934 or is the subject of a
 5 United States post office fraud order; but:

6 (i) the commissioner may not institute a revocation or
 7 suspension proceeding under this subsection (f) more than 1
 8 year from the date of the order relied on; and

9 (ii) he may not enter any order under this subsection
 10 (f) on the basis of an order unless that order was based on
 11 facts which would currently constitute a ground for an order
 12 under this section;

13 (g) has engaged in dishonest or unethical practices in
 14 the securities business;

15 (h) is insolvent, either in the sense that his
 16 liabilities exceed his assets or in the sense that he cannot
 17 meet his obligations as they mature, but the commissioner
 18 may not enter an order against a broker-dealer or investment
 19 adviser under this subsection (h) without a finding of
 20 insolvency as to the broker-dealer or investment adviser;

21 (i) has not complied with a condition imposed by the
 22 commissioner under this section or is not qualified on the
 23 basis of such factors as training, experience, or knowledge
 24 of the securities business; or

25 (j) has failed to pay the proper filing fee, but the

1 commissioner may enter only a denial order under this
 2 subsection (j), and he shall vacate any such order when the
 3 deficiency has been corrected.

4 ~~{11}~~ (13) Upon the entry of the order under subsection
 5 ~~{10}~~ (12) of this section, the commissioner shall promptly
 6 notify the applicant or registrant, as well as the employer
 7 or prospective employer if the applicant or registrant is a
 8 salesman or investment adviser representative, that it has
 9 been entered and of the reasons therefor and that if
 10 requested by the applicant or registrant within 15 days
 11 after the receipt of the commissioner's notification the
 12 matter will be promptly set down for hearing. If no hearing
 13 is requested within 15 days and none is ordered by the
 14 commissioner, the order will remain in effect until it is
 15 modified or vacated by the commissioner. If a hearing is
 16 requested or ordered, the commissioner, after notice of and
 17 opportunity for hearing, may affirm, modify, or vacate the
 18 order.

19 ~~{12}~~ (14) If the commissioner finds that any registrant
 20 or applicant for registration is no longer in existence or
 21 has ceased to do business as a broker-dealer, investment
 22 adviser, or salesman, or investment adviser representative
 23 or is subject to an adjudication of mental incompetence or
 24 to the control of a committee, conservator, or guardian or
 25 cannot be located after reasonable search, the commissioner

1 may by order cancel the registration or application.

2 ~~{13}~~(15) The commissioner may, after suspending or
3 revoking registration of any broker-dealer, salesman, or
4 investment adviser, ~~under--subsection--{10}~~ or investment
5 adviser representative, impose a fine not to exceed \$5,000
6 upon such broker-dealer, salesman, or investment adviser, or
7 investment adviser representative. The fine is in addition
8 to all other penalties imposed by the laws of this state and
9 must be collected by the commissioner in the name of the
10 state of Montana and deposited in the general fund.
11 Imposition of any fine under this subsection is an order
12 from which an appeal may be taken pursuant to 30-10-308. If
13 any broker-dealer, salesman, or investment adviser, or
14 investment adviser representative fails to pay a fine
15 referred to in this subsection, the amount of the fine is a
16 lien upon all of the assets and property of such
17 broker-dealer, salesman, or investment adviser, or
18 investment adviser representative in this state and may be
19 recovered by suit by the commissioner and deposited in the
20 general fund. Failure of a broker-dealer, salesman, or
21 investment adviser, or investment adviser representative to
22 pay a fine also constitutes a forfeiture of his right to do
23 business in this state under parts 1 through 3 of this
24 chapter."

25 Section 4. Section 30-10-209, MCA, is amended to read:

1 "30-10-209. Fees. The following fees shall be paid in
2 advance under the provisions of parts 1 through 3 of this
3 chapter:

4 (1) (a) For the registration of securities by
5 notification, coordination, or qualification, there shall be
6 paid to the commissioner for the first year of registration
7 a registration fee of \$200 for the first \$100,000 of initial
8 issue or portion thereof in this state, based on offering
9 price, plus 1/10 of 1% for any excess over \$100,000, with a
10 maximum of \$1,000.

11 (b) Each year thereafter, a registration of securities
12 may be renewed, prior to its termination date, for an
13 additional year upon consent of the commissioner and payment
14 of an additional registration fee to be computed at 1/10 of
15 1% of the aggregate offering price of such securities which
16 are to be offered in this state during that year, even
17 though the maximum fee was paid the preceding year. In no
18 event shall the additional registration fee be less than
19 \$200 or more than \$1,000. The registration statement for
20 such securities may be amended to increase the amount of
21 securities to be offered.

22 (c) If a registrant sells securities in excess of the
23 aggregate amount registered for sale in this state, the
24 registrant may file an amendment to the registration
25 statement to include the excess sales. If the registrant

1 fails to file an amendment before the expiration date of the
2 registration order, he shall pay a filing fee for the excess
3 sales of three times the amount calculated in the manner
4 specified in subsection (1)(b). Registration of the excess
5 securities is effective retroactively to the date of the
6 existing registration.

7 (2) (a) For registration of a broker-dealer or
8 investment adviser, the fee shall be \$200 for original
9 registration and \$200 for each annual renewal.

10 (b) For registration of a salesman or investment
11 adviser representative, the fee shall be \$50 for original
12 registration with each employer, \$50 for each annual
13 renewal, and \$50 for each transfer.

14 (3) For certified copies of any documents filed with
15 the commissioner, the fee shall be the cost to the
16 department.

17 (4) For a request for an exemption under
18 30-10-105(15), the fee shall be established by the
19 commissioner by rule. For a request for any other exemption
20 or an exception to the provisions of parts 1 through 3 of
21 this chapter, the fee shall be \$50.

22 (5) For waiver of the residency requirement of
23 30-10-201(4), the fee shall be \$50 for each original
24 registration.

25 (6) All fees are considered fully earned when

1 received. In the event of overpayment, only those amounts in
2 excess of \$10 may be refunded.

3 (7) All fees, examination charges, and miscellaneous
4 charges, except fines or penalties, collected by the
5 commissioner pursuant to parts 1 through 3 of this chapter
6 and the rules adopted hereunder must be deposited into the
7 securities regulatory trust account, pursuant to 30-10-115
8 through 30-10-118.

9 (8) All fines and penalties collected by the
10 commissioner pursuant to parts 1 through 3 of this chapter
11 and the rules adopted hereunder must be deposited into the
12 general fund."

13 NEW SECTION. Section 5. Extension of authority. Any
14 existing authority of the securities commissioner to make
15 rules on the subject of the provisions of this act is
16 extended to the provisions of this act.

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for SB186, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

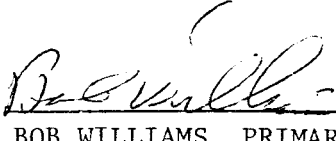
An act to provide for the registration of an Investment Advisor Representative.

ASSUMPTIONS:

1. No additional staff will be required.
2. The number of Representatives to register will be 50 in FY88 and 60 in FY89.
3. The additional office supply expense will be \$100 in FY88 and \$125 in FY89.

<u>FISCAL IMPACT:</u>	<u>FY88</u>	<u>FY89</u>	<u>Total '89 Biennium</u>
<u>Expenditures:</u>	\$ 100	\$ 125	\$ 225
<u>Revenues:</u>	2,500	3,000	5,500
Net Effect	\$ 2,400	\$ 2,875	\$ 5,275

 DATE 1/21/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

 DATE 1/26/87
BOB WILLIAMS, PRIMARY SPONSOR
Fiscal Note for SB186, as introduced.

SB 186

Run Time 04:31
Run Date 01/13/91

DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-CAROLYN LINDEN

BILL NO.	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REFERRER TO COMMITTEE	DATE OUT
SB0130	1/17	1/23	1/23/87; 1/30/87	PASS AS AMENDED 1/30/87		1/30/87
MANNING, RICHARD E. ALLOW PARIMUTUEL BETTING ON NATIONAL RACES SUCH AS KENTUCKY DERBY						
SB0140	1/19	1/23	1/23/87; 1/27/87; 1/29/87	DO PASS 1/29/87		1/29/87
MAZUREK, JOSEPH P. INCREASING DEPOSIT IN LOAN LOSS RESERVE FUND BY ECONOMIC DEVELOPMENT BOARD						
SB0156	1/20	1/27	1/27/87	PASS AS AMENDED 1/27/87		1/27/87
MANNING, RICHARD E. ALLOW LOCAL GOV. TO LICENSE SPORTS POOL; UP LIMITS \$5 CHANCE, \$500 PER POOL						
SB0163	1/21	2/03	2/3/87; 2/11/87	PASS AS AMENDED 2/11/87		2/11/87
BOYLAN, PAUL F. LIMITING ASSETS OF MERGED BANKS						
SB0182	1/21	1/28	1/28/87	DO PASS 1/28/87		1/28/87
MEYER, DARRYL CORPORATE STOCK ESCROW AS CONDITION OF SECURITIES REGISTRATION						
SB0186	1/21	1/28	1/28/87	DO PASS 1/28/87		1/28/87
WILLIAMS, BOB REGISTRATION OF INVESTMENT ADVISOR REPRESENTATIVES						
SB0188	1/21	1/28	1/28/87	PASS AS AMENDED 1/28/87	JUDICIARY	1/28/87
WALKER, MIKE DISCLOSURE OF ELECTRONIC FUNDS TRANSACTION PURSUANT TO SUBPOENA						
SB0198	1/23	2/03	2/3/87; 2/11/87	PASS AS AMENDED 2/11/87		2/11/87
THAYER, GENE MERGING BANKS, BRANCHING BY INDEPENDENT BANKS						
SB0201	1/23	1/30	1/30/87; 2/16/87	TABLED 2/16/87		TABLED 2/16/87
STORY, PETER R. DEFINING "PREMISES" TO INCLUDE MORE THAN ONE BUILDING						
SB0202	1/23	1/28	1/28/87; 1/30/87	DO PASS 1/30/87		1/30/87
WEEDING, CECIL COMMODITIES INVESTMENTS REGULATED BY SECURITIES COMMISSIONER						
SB0205	1/24	2/04	2/4/87; 2/11/87; 2/16/87 2/17/87; 2/20/87	TABLED 2/20/87		TABLED 2/20/87
HALLIGAN, MIKE VOUCHER SYSTEM FOR SRS PAYMENT FOR PRESCRIPTION MEDICATION						

Mr. Tucker said there are so-called pink sheets that may not have an established market but does give a trading value. With the two-year escrow period, it may either make or break a company, but it is fair to the public investors. The act that has been in effect since 1961 spells out when and where discount will be taken.

The hearing on Senate Bill 182 was closed.

DISCUSSION BY THE COMMITTEE: Senator Thayer felt some of the answers were vague. Senator Neuman felt the state has been criticized for being anti-business and that more barriers would make it more so; he felt the buyer should assume the responsibility of knowing what he is buying. Senator Walker said the legislation is needed because of the economic times and poor economy both statewide and nationwide, plus the fact that many out-of-country investors are here without recommendation and unknown reputations. He said the bill would protect the people searching for revenue and investments. Senator Neuman felt that it may cost more in the future. Ms. Schulke informed the committee that it would not require another FTE.

EXECUTIVE ACTION ON SENATE BILL 182: Senator Walker moved that Senate Bill 182 DO PASS. The motion was seconded by Senator McLane and PASSED BY MAJORITY with Senator Neuman voting NO.

CONSIDERATION OF SENATE BILL 186: Senator Bob Williams, Senate District 15, Hobson, sponsor of the bill, stated that Senate Bill 186 was requested by the State Auditor. SB 186 has a fiscal note and provides for investment advisor registration. The Securities Act of Montana currently requires registration of securities, brokers, salesmen, and investment advisors, but only the firm is required to be registered and not the people who work there. They are the ones who actually give the investment advice. The bill requires investment advisor representatives to register the same as the others. By enacting this legislation, Montana would be furthering the policies supporting the securities act; namely, uniformity of state securities regulation and protection of the investors. He asked proponent Schulke to speak on the bill.

PROPOSERS: Kim Schulke, Deputy Securities Commissioner and staff attorney for the securities department, reviewed thoroughly the testimony she submitted. (EXHIBIT 4) She reassured Senator Neuman there would be no additional FTE's

required. She further stated that some revenue is expected from this bill. The existing procedures to register security salesmen will be used to register investment advisor representatives.

Rick Tucker reviewed many of the same items touched by Ms. Schulke and told the committee that an investment advisor representative cannot do any procedure receiving a fee. By the registration provided in the bill, the investment advisor would be responsible for his own plus his representative's, thereby, saving that individual to a degree. This bill would prevent the securities commissioner from actions against an individual for not registering as a full investment advisor and allows him to operate as an investment advisor representative. This is needed because of the outgrowth of all the so-called financial planners.

OPPONENTS: None

QUESTIONS FROM THE COMMITTEE: Senator Williams asked if the financial advisor has the same powers as the power-of-attorney. Ms. Schulke said that a certain relationship exists between these people and their client and does give power-of-attorney. Senator Neuman remarked that another bill provides for education for insurance salesmen and perhaps financial planning could fit into that bill rather than drafting another bill this next session. Ms. Schulke said her department does not want to get into regulation of financial planners at this time. She reiterated this bill would make the investment advisor responsible to the client. Senator Williams asked whether it is just those who are associated with a brokerage or a securities firm, and Ms. Schulke answered that the definition of an investment advisor is on page 4 of the bill and it sets forth what an investment advisor representative is expected to do. Senator Thayer asked if established brokerage firms in Montana are in favor of the bill. Ms. Schulke said they were but she was not certain about the banks. John Cadby, Montana Bankers Association, replied that banks that provide discount service do not provide advice as a stockbroker would and Mr. Tucker added that banks would not be affected by this bill unless a small bank would violate the law and get into the investment advisory business. Senator Neuman asked if correspondence through the mail would fall into the category within the bill. Ms. Schulke said that they do not give specific advice to specific persons and the Supreme Court had ruled them out.

Senator Williams closed by emphasizing that the bill is necessary to give the people protection and proper guidance. He thank Ms. Schulke for her help.

senator Thayer expressed concern because one might pay the small fee in order to get that status in the bill. Ms. Schulke said there is an exam and other requirements to prevent that.

EXECUTIVE ACTION ON SENATE BILL 186: Senator Williams moved the bill DO PASS. The motion was seconded by Senator Meyer, and PASSED BY MAJORITY with Senator Neuman voting NO.

CONSIDERATION OF SENATE BILL 202: Senator Cecil Weeding, District 14, Jordon, stated that the bill was requested by the State Auditor and Securities Commissioner and deals with commodities investments. He said it would bring them under the jurisdiction of the Securities Act of Montana and would be subject to rules and regulations. Section 1 in Exhibit 5, provides a definition of "commodity," and he went through the exhibit with the committee. (EXHIBIT 5)

PROPOSERS: Kim Schulke added that many times the investment contracts are regulated by the commissioners but in order to enforce the Securities Act against securities law violators, it must be proven that commodity investment fits the definition of security in the form of investment contract. Detailed elements of an investment contract are often hard to prove and often they refuse to abide by subpoena. Firms that sell commodities illegally in Montana without benefit of registration use high pressure sales and long distance solicitation. Most commodities sold this way do not exist. She further stated the bill would let a legitimate commodities company operate without further state regulation and enhances the integrity of the commodities market by helping to eliminate the drain of investment funds. She explained how the bill was derived as written in Exhibit 5, page 3. The bill will help the Securities Department enforce the Securities Act against those firms and it provides exemptions from registration for federally regulated people.

OPPOSERS: None

QUESTIONS FROM THE COMMITTEE: Senator Thayer asked about penalties. Ms. Schulke said penalties would be explained in the Securities Act. Senator Thayer asked for and found out there is no list of violators but there is some jurisdiction over them. Senator Thayer said that in 1973, the federal government pre-empted all the states from any activity in commodities and prior to that, legitimate commodities were referred to as those created on exchanges with regulations. The federal government had relaxed their regulations under the

ROLL CALL

BUSINESS AND INDUSTRY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1-28-87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	X		
PAUL BOYLAN	X		
DELWYN GAGE			X
HARRY H. McLANE	X		
DARRYL MEYER	X		
TED NEUMAN	X		
GENE THAYER	X		
MIKE WALKER	X		
CECIL WEEDING	X		
BOB WILLIAMS	X		

Each day attach to minutes.

Kim Schulke
Deputy Securities Commissioner
444-5236

5B186
SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 1/28/87

BILL NO. SB186

Investment Adviser Representative Registration under the Securities Act of Montana. SECTION BY SECTION REVIEW.

Requested by State Auditor and Commissioner of Securities,
Andrea "Andy" Bennett

Section 1. Amendment to 30-10-103.

"(a) an investment adviser representative" has been added to subsection (6) to indicate that the definition of an investment adviser does not include an investment adviser representative. With this addition, the subsection has been re-lettered.

Subsection (7) has been added to define investment adviser representative. The definition includes all of those people associated with an investment adviser who give investment advice. Clerical or ministerial personnel who do not render investment advice, are not required to be registered. The section is renumbered to indicate the addition of a subsection.

Section 2. Amendment to 30-10-110.

"and investment adviser representatives" is added to the scope section of the Securities Act, to indicate that the Securities Act applies to investment adviser representatives in the same way that it applies to investment advisers.

Section 3. Amendment to 30-10-201.

"investment adviser representative" is added to subsections 1, 3, 4, 7, 10, 12, 13, 14 and 15. This is the registration section of the Securities Act. Investment adviser representatives will be registered in the same way as investment advisers.

Subsection (9) is added to provide that an investment adviser representative is not considered to be registered with the securities department unless he is associated with a registered investment adviser as specified in his application. The section is renumbered to reflect the addition of subsections (8) and (9).

Section 4. Amendment to 30-10-209.

"or investment adviser representative" is added to subsection (2)(b), to indicate that the fee for registration of an investment adviser representative is \$50.

Section 5. Extension of authority.

This section provides that the commissioner of securities may make rules on the subject of investment adviser representative registration.

Investment Adviser Representative Registration under the Securities Act of Montana. JUSTIFICATION.

Requested by State Auditor and Commissioner of Securities,
Andrea "Andy" Bennett

The Securities Act of Montana currently requires the registration of securities, broker-dealers, securities salesmen, and investment advisers. With respect to investment advisers, only the firm is required to be registered, and not the people who work for the firm and who actually give the investment advice. It is the opinion of the Securities Commissioner that these individuals, much like securities salesmen who work for broker-dealers, should be registered, and thereby fall under the supervision of the securities laws.

The amendments to the Securities Act proposed by this bill would require investment adviser representatives to register in much the same manner as securities salesmen. This registration requirement has been recommended by the North American Securities Administrators Association, an association made up of the securities commissioners of all 50 states and the provinces of Canada. Similar legislation is before the legislatures of several other states. By enacting this legislation, Montana would be furthering the policies supporting the Securities Act, namely, uniformity of state securities regulation, and protection of investors.

An example of the situation we are trying to correct is this: An employee of an investment adviser firm gives some misleading advice to a customer. The customer acts on the advice, and loses thousands of dollars. The customer complains to the securities department. The securities department contacts the investment adviser firm to question the giving of the advice. The firm indicates that it has not approved the type of advice given, and that it is therefore not responsible for the misleading advice. It may not then be reasonable for the Securities Department to suspend or revoke the license of the firm. Instead, assuming the allegations of the customer are proven to be correct, the employee of the investment adviser firm should be sanctioned. The employee currently is not required to hold a license. The Securities Department cannot take an action against a non-existent license, and the employee can continue to give investment advice. The creation of a licensing procedure will enable the Securities Department to monitor the activities of such employees, and outline certain requirements for their registration. These employees will be designated as investment adviser representatives.

There are currently no legal requirements to meet before becoming an investment adviser representative. It is the

Exhibit #4
1/28/87
SB186

opinion of the Securities Commissioner that reasonable requirements should be imposed so that the situation previously described either does not occur, or can be remedied if it does occur. Many of these investment adviser representatives have powers of attorney over their clients funds. The opportunity for fraud is great in such situations.

Finally, the investment adviser field is rapidly expanding. More and more people are dispensing investment advice. The securities industry is a sensitive, highly and peculiarly specialized field of activity to which the investing public is exposed and one in which the public is generally not well versed. The potential for serious financial injury to the buying public suggests that persons who dispense investment advice be required to comply with reasonable regulations in order to protect the public and the integrity of the marketplace.

1/28/87

NAME:

REPRESENTING

BILL #

Check One

Support	Oppose
---------	--------

Shutles

Att: Auditor & Securities Comm.

182, 184,
188, 202.

✓

Tucker

Cadbury

J. Kim Schulke

L28

Mitchell Building, Room 274

SENATE BUSINESS

~~EXHIBIT NO~~

1744-5236

DATE _____

~~BILL NO~~

REPRESENTING WHOM?

State Auditor & Commissioner of Securities

APPEARING ON WHICH PROPOSAL:

SB 182, 186, 188, 202

DO YOU:

SUPPORT?

✓

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME:

R. G. "Rick" Tucker

DATE:

1-28-57

ADDRESS:

156 FAIRWAY Dr.

PHONE:

442-6302

REPRESENTING WHOM?

Self

APPEARING ON WHICH PROPOSAL:

SB - 182, 186, 188, 202

DO YOU:

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS:

As the Deputy Securities Commr. for
17 years - now retired - I support
each of the above bills.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

JANUARY 28 1987

MR. PRESIDENT

We, your committee on..... **BUSINESS AND INDUSTRY**

..... had under consideration..... **SENATE BILL** No. **186**

FIRST reading copy (**WHITE**)
color

Respectfully report as follows: That..... **SENATE BILL** No. **186**

SENATOR KOLSTAD,

Chairman.

[illegible]

1 *Senate* BILL NO. *186*
2 INTRODUCED BY *B. Williams - Meyer*
3 BY REQUEST OF THE STATE AUDITOR AND
4 SECURITIES COMMISSIONER.

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
7 REGISTRATION OF AN INVESTMENT ADVISER REPRESENTATIVE; AND
8 AMENDING SECTIONS 30-10-103, 30-10-110, 30-10-201, AND
9 30-10-209, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 30-10-103, MCA, is amended to read:
13 "30-10-103. Definitions. When used in parts 1 through
14 3 of this chapter, unless the context requires otherwise,
15 the following definitions apply:

16 (1) "Commissioner" means securities commissioner of
17 this state.

18 (2) "Salesman" means any individual other than a
19 broker-dealer who represents a broker-dealer or issuer in
20 effecting or attempting to effect sales of securities. A
21 partner, officer, or director of a broker-dealer or issuer
22 is a salesman only if he otherwise comes within this
23 definition. "Salesman" does not include an individual who
24 represents an issuer in:

25 (a) effecting a transaction in a security exempted by

1 subsections (1), (2), (3), (9), (10), (11), or (12) of
2 30-10-104;

3 (b) effecting transactions exempted by 30-10-105; or

4 (c) effecting transactions with existing employees,
5 partners, or directors of the issuer if no commission or
6 other remuneration is paid or given directly or indirectly
7 for soliciting any person in this state.

8 (3) "Broker-dealer" means any person engaged in the
9 business of effecting transactions in securities for the
10 account of others or for his own account. "Broker-dealer"
11 does not include:

12 (a) a salesman, issuer, bank, savings institution,
13 trust company, or insurance company; or

14 (b) a person who has no place of business in this
15 state if he effects transactions in this state exclusively
16 with or through the issuers of the securities involved in
17 the transactions, other broker-dealers, or banks, savings
18 institutions, trust companies, insurance companies,
19 investment companies as defined in the Investment Company
20 Act of 1940, pension or profit-sharing trusts, or other
21 financial institutions or institutional buyers, whether
22 acting for themselves or as trustee.

23 (4) "Registered broker-dealer" means a broker-dealer
24 registered pursuant to 30-10-201.

25 (5) "Guaranteed" means guaranteed as to payment of

principal, interest, or dividends.

(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) an investment adviser representative;

(b) a bank, savings institution, trust company, or insurance company;

(c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(d) a broker-dealer;

(e) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(f) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(g) a person who has no place of business in this state if his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as

defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(h) such other persons not within the intent of this subsection (6) as the commissioner may by rule or order designate.

(7) (a) "Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

(i) makes any recommendation or otherwise renders advice regarding securities;

(ii) manages accounts or portfolios of clients;

(iii) determines which recommendation or advice regarding securities should be given;

(iv) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(v) supervises employees who perform any of the foregoing.

(b) "Investment adviser representative" does not include an individual registered as a salesman pursuant to 30-10-201.

(8) "Issuer" means any person who issues or

1 proposes to issue any security, except that with respect to
 2 certificates of deposit, voting-trust certificates, or
 3 collateral-trust certificates or with respect to
 4 certificates of interest or shares in an unincorporated
 5 investment trust not having a board of directors (or persons
 6 performing similar functions) or of the fixed, restricted
 7 management, or unit type, the term "issuer" means the person
 8 or persons performing the acts and assuming the duties of
 9 depositor or manager pursuant to the provisions of the trust
 10 or other agreement or instrument under which the security is
 11 issued.

12 {8}{9} "Nonissuer" means not directly or indirectly
 13 for the benefit of the issuer.

14 {9}{10} "Person", for the purpose of parts 1 through 3
 15 of this chapter, means an individual, a corporation, a
 16 partnership, an association, a joint-stock company, a trust
 17 where the interests of the beneficiaries are evidenced by a
 18 security, an unincorporated organization, a government, or a
 19 political subdivision of a government.

20 {10}{11} (a) "Sale" or "sell" includes every contract
 21 of sale of, contract to sell, or disposition of a security
 22 or interest in a security for value.

23 (b) "Offer" or "offer to sell" includes every attempt
 24 or offer to dispose of or solicitation of an offer to buy a
 25 security or interest in a security for value.

1 (c) Any security given or delivered with or as a bonus
 2 on account of any purchase of securities or any other thing
 3 is considered to constitute part of the subject of the
 4 purchase and to have been offered and sold for value. A
 5 purported gift of assessable stock is considered to involve
 6 an offer and sale. Every sale or offer of a warrant or right
 7 to purchase or subscribe to another security of the same or
 8 another issuer, as well as every sale or offer of a security
 9 which gives the holder a present or future right or
 10 privilege to convert into another security of the same or
 11 another issuer, is considered to include an offer of the
 12 other security.

13 {11}{12} "Securities Act of 1933", "Securities Exchange
 14 Act of 1934", "Public Utility Holding Company Act of 1935",
 15 and "Investment Company Act of 1940" mean the federal
 16 statutes of those names as amended before or after July 1,
 17 1961.

18 {12}{13} "Security" means any note; stock; treasury
 19 stock; bond; debenture; evidence of indebtedness;
 20 certificate of interest or participation in any
 21 profit-sharing agreement; collateral-trust certificate;
 22 preorganization certificate or subscription; transferable
 23 shares; investment contract; voting-trust certificate;
 24 certificate of deposit for a security; certificate of
 25 interest or participation in an oil, gas, or mining title or

1 lease or in payments out of production under such a title or
 2 lease; or, in general, any interest or instrument commonly
 3 known as a security or any certificate of interest or
 4 participation in, temporary or interim certificate for,
 5 receipt for, guarantee of, or warrant or right to subscribe
 6 to or purchase any of the foregoing. "Security" does not
 7 include any insurance or endowment policy or annuity
 8 contract under which an insurance company promises to pay a
 9 sum of money either in a lump sum or periodically for life
 10 or some other specified period.

11 ~~{13}~~(14) "State" means any state, territory, or
 12 possession of the United States, as well as the District of
 13 Columbia and Puerto Rico."

14 Section 2. Section 30-10-110, MCA, is amended to read:

15 "30-10-110. Scope. (1) Sections 30-10-201(1),
 16 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to
 17 persons who sell or offer to sell when an offer to sell is
 18 made in this state or an offer to buy is made and accepted
 19 in this state.

20 (2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303
 21 apply to persons who buy or offer to buy when an offer to
 22 buy is made in this state or an offer to sell is made and
 23 accepted in this state.

24 (3) For the purpose of this section, an offer to sell
 25 or buy is made in this state, whether or not either party is

1 then present in this state, when the offer either originates
 2 from this state or is directed by the offeror to this state
 3 and received at the place to which it is directed or at any
 4 post office in this state in the case of a mailed offer, but
 5 for the purpose of 30-10-202, an offer to sell which is not
 6 directed to or received by the offeree in this state is not
 7 made in this state.

8 (4) For the purpose of this section, an offer to buy
 9 or sell is accepted in this state when acceptance is
 10 communicated to the offeror in this state and acceptance has
 11 not previously been communicated to the offeror, orally or
 12 in writing, outside this state. Acceptance is communicated
 13 to the offeror in this state, whether or not either party is
 14 then present in this state, when the offeree directs it to
 15 the offeror in this state, reasonably believing the offeror
 16 to be in this state, and it is received at the place to
 17 which it is directed or at any post office in this state in
 18 the case of a mailed acceptance.

19 (5) An offer to sell or to buy is not made in this
 20 state when:

21 (a) the publisher circulates or there is circulated on
 22 his behalf in this state any bona fide newspaper or other
 23 publication of general, regular, and paid circulation which
 24 is:

25 (i) not published in this state; or

(ii) published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers and investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state."

Section 3. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers, and investment adviser representatives. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser or as an investment

adviser representative unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser representative may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. Payment of the waiver fee shall be as prescribed in 30-10-209. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements

prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires.

(6) When the registration requirements are complied with, the commissioner shall approve the registration.

(7) Registration of a broker-dealer, salesman, or investment adviser, or investment adviser representative shall be effective until December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed.

(8) The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the

issuer or broker-dealer shall promptly notify the commissioner.

(9) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser registered under this act and specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser and the investment adviser representative shall promptly notify the commissioner.

(8)(10) Registration of a broker-dealer, salesman, or investment adviser, or investment adviser representative may be renewed by filing prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser, or investment adviser representative filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the

1 commissioner.

2 {9}(11) Every registered broker-dealer and investment
3 adviser shall make and keep such accounts and other records,
4 except with respect to securities exempt under 30-10-104(1),
5 as may be prescribed by the commissioner. All records so
6 required shall be preserved for 3 years unless the
7 commissioner prescribes otherwise for particular types of
8 records. All the records of a registered broker-dealer or
9 investment adviser are subject at any time or from time to
10 time to such reasonable periodic, special, or other
11 examinations, within or without this state, by
12 representatives of the commissioner, as the commissioner
13 considers necessary or appropriate in the public interest or
14 for the protection of investors.

15 {10}(12) The commissioner may by order deny, suspend,
16 or revoke registration of any broker-dealer, salesman, or
17 investment adviser, or investment adviser representative if
18 he finds that the order is in the public interest and that
19 the applicant or registrant or, in the case of a
20 broker-dealer or investment adviser, any partner, officer,
21 or director:

22 (a) has filed an application for registration under
23 this section which, as of its effective date or as of any
24 date after filing in the case of an order denying
25 effectiveness, was incomplete in any material respect or

1 contained any statement which was, in the light of the
2 circumstances under which it was made, false or misleading
3 with respect to any material fact;

4 (b) has willfully violated or willfully failed to
5 comply with any provision of parts 1 through 3 of this
6 chapter or a predecessor law or any rule or order under
7 parts 1 through 3 of this chapter or a predecessor law;

8 (c) has been convicted of any misdemeanor involving a
9 security or any aspect of the securities business or any
10 felony;

11 (d) is permanently or temporarily enjoined by any
12 court of competent jurisdiction from engaging in or
13 continuing any conduct or practice involving any aspect of
14 the securities business;

15 (e) is the subject of an order of the commissioner
16 denying, suspending, or revoking registration as a
17 broker-dealer, salesman, or investment adviser, or
18 investment adviser representative;

19 (f) is the subject of an order entered within the past
20 5 years by the securities administrator of any other state
21 or by the federal securities and exchange commission denying
22 or revoking registration as a broker-dealer, salesman, or
23 investment adviser, or investment adviser representative or
24 the substantial equivalent of those terms as defined in
25 parts 1 through 3 of this chapter or is the subject of an

1 order of the federal securities and exchange commission
2 suspending or expelling him from a national securities
3 exchange or national securities association registered under
4 the Securities Exchange Act of 1934 or is the subject of a
5 United States post office fraud order, but:

6 (i) the commissioner may not institute a revocation or
7 suspension proceeding under this subsection (f) more than 1
8 year from the date of the order relied on; and

9 (ii) he may not enter any order under this subsection
10 (f) on the basis of an order unless that order was based on
11 facts which would currently constitute a ground for an order
12 under this section;

13 (g) has engaged in dishonest or unethical practices in
14 the securities business;

15 (h) is insolvent, either in the sense that his
16 liabilities exceed his assets or in the sense that he cannot
17 meet his obligations as they mature, but the commissioner
18 may not enter an order against a broker-dealer or investment
19 adviser under this subsection (h) without a finding of
20 insolvency as to the broker-dealer or investment adviser;

21 (i) has not complied with a condition imposed by the
22 commissioner under this section or is not qualified on the
23 basis of such factors as training, experience, or knowledge
24 of the securities business; or

25 (j) has failed to pay the proper filing fee, but the

1 commissioner may enter only a denial order under this
2 subsection (j), and he shall vacate any such order when the
3 deficiency has been corrected.

4 ~~{11}~~(13) Upon the entry of the order under subsection
5 ~~{10}~~ (12) of this section, the commissioner shall promptly
6 notify the applicant or registrant, as well as the employer
7 or prospective employer if the applicant or registrant is a
8 salesman or investment adviser representative, that it has
9 been entered and of the reasons therefor and that if
10 requested by the applicant or registrant within 15 days
11 after the receipt of the commissioner's notification the
12 matter will be promptly set down for hearing. If no hearing
13 is requested within 15 days and none is ordered by the
14 commissioner, the order will remain in effect until it is
15 modified or vacated by the commissioner. If a hearing is
16 requested or ordered, the commissioner, after notice of and
17 opportunity for hearing, may affirm, modify, or vacate the
18 order.

19 ~~{12}~~(14) If the commissioner finds that any registrant
20 or applicant for registration is no longer in existence or
21 has ceased to do business as a broker-dealer, investment
22 adviser, or salesman, or investment adviser representative
23 or is subject to an adjudication of mental incompetence or
24 to the control of a committee, conservator, or guardian or
25 cannot be located after reasonable search, the commissioner

1 may by order cancel the registration or application.

2 ~~{13}~~(15) The commissioner may, after suspending or
 3 revoking registration of any broker-dealer, salesman, or
 4 investment adviser, ~~under--subsection--{10}~~ or investment
 5 adviser representative, impose a fine not to exceed \$5,000
 6 upon such broker-dealer, salesman, or investment adviser, or
 7 investment adviser representative. The fine is in addition
 8 to all other penalties imposed by the laws of this state and
 9 must be collected by the commissioner in the name of the
 10 state of Montana and deposited in the general fund.
 11 Imposition of any fine under this subsection is an order
 12 from which an appeal may be taken pursuant to 30-10-308. If
 13 any broker-dealer, salesman, or investment adviser, or
 14 investment adviser representative fails to pay a fine
 15 referred to in this subsection, the amount of the fine is a
 16 lien upon all of the assets and property of such
 17 broker-dealer, salesman, or investment adviser, or
 18 investment adviser representative in this state and may be
 19 recovered by suit by the commissioner and deposited in the
 20 general fund. Failure of a broker-dealer, salesman, or
 21 investment adviser, or investment adviser representative to
 22 pay a fine also constitutes a forfeiture of his right to do
 23 business in this state under parts 1 through 3 of this
 24 chapter."

25 Section 4. Section 30-10-209, MCA, is amended to read:

1 "30-10-209. Fees. The following fees shall be paid in
 2 advance under the provisions of parts 1 through 3 of this
 3 chapter:

4 (1) (a) For the registration of securities by
 5 notification, coordination, or qualification, there shall be
 6 paid to the commissioner for the first year of registration
 7 a registration fee of \$200 for the first \$100,000 of initial
 8 issue or portion thereof in this state, based on offering
 9 price, plus 1/10 of 1% for any excess over \$100,000, with a
 10 maximum of \$1,000.

11 (b) Each year thereafter, a registration of securities
 12 may be renewed, prior to its termination date, for an
 13 additional year upon consent of the commissioner and payment
 14 of an additional registration fee to be computed at 1/10 of
 15 1% of the aggregate offering price of such securities which
 16 are to be offered in this state during that year, even
 17 though the maximum fee was paid the preceding year. In no
 18 event shall the additional registration fee be less than
 19 \$200 or more than \$1,000. The registration statement for
 20 such securities may be amended to increase the amount of
 21 securities to be offered.

22 (c) If a registrant sells securities in excess of the
 23 aggregate amount registered for sale in this state, the
 24 registrant may file an amendment to the registration
 25 statement to include the excess sales. If the registrant

fails to file an amendment before the expiration date of the registration order, he shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be \$200 for original registration and \$200 for each annual renewal.

(b) For registration of a salesman or investment adviser representative, the fee shall be \$50 for original registration with each employer, \$50 for each annual renewal, and \$50 for each transfer.

(3) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee shall be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee shall be \$50.

(5) For waiver of the residency requirement of 30-10-201(4), the fee shall be \$50 for each original registration.

(6) All fees are considered fully earned when

received. In the event of overpayment, only those amounts in excess of \$10 may be refunded.

(7) All fees, examination charges, and miscellaneous charges, except fines or penalties, collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited into the securities regulatory trust account, pursuant to 30-10-115 through 30-10-118.

(8) All fines and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited into the general fund."

NEW SECTION. Section 5. Extension of authority. Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

-End-

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

March 10, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on March 10, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

SENATE BILL NO. 186 - Registration of Investment Advisor Representatives, sponsored by Senator Bob Williams, Senate District No. 15, Hobson. Senator Williams stated this bill was at the request of the State Auditor's office. He said this bill would provide for the registration of an investment adviser representative. He added the current law requires only the firm be registered, not the people who work for the firm and give the investment advice.

PROPOSERS

Kim Schulke, Deputy Securities Commissioner, State Auditor's Office. Ms. Schulke submitted information on the bill and their proposed amendments. Exhibit Nos. 1 and 2.

Charles Graveley, IDS Financial Services, Helena. Mr. Graveley stated the bill as drafted proposes to cover investment advisor representatives in addition to specifying that investment advisor representatives do not include individuals who registered as broker-dealer salesmen under the act. He said IDS supports the registration of appropriate representatives and employees of registered financial planning company or investment advisors. He submitted amendments to the legislation, which had been discussed with the State Auditor's Office. Exhibit No. 3.

Bruce MacKenzie, D. A. Davidson Co. Mr. MacKenzie stated the Company supports this legislation, and said it is appropriate that the investing public has some protection from individuals who say they are financial planners and are not. He said there has been some difficulty in that area because of no regulation.

OPPOSERS

None.

QUESTIONS

Rep. Jones asked Ms. Schulke's opinion on the amendments offered by Mr. Graveley. Ms. Schulke responded that

they agree with the amendments that are the same as their office proposed. She said the second amendment that they want to add, "registered under the act" and "to clients in the state" several times to one section, is redundant as it is covered by the scope section of the act.

Rep. Simon asked what type of registration is needed for the investment representatives who sell securities. Ms. Schulke responded that advisors would be required to be registered as either broker-dealers or securities salesmen with an individual license.

CLOSING

Senator Williams stated this bill would help people that need a financial advisor and are assured that when they call an investment firm, they would get a registered person. He said he recommended that only the amendments presented by the State Auditor's Office be accepted at the present time.

Chairman Kitselman referred Senate Bill No. 186 to a subcommittee composed of Reps. Thomas, Swysgood, and Bachini, with Rep. Thomas as chairman.

SENATE BILL NO. 202 - Commodities Investments Regulated By Securities Commissioner, sponsored by Senator Cecil Weeding, Senate District No. 14, Jordan. Sen. Weeding stated this bill was at the request of the State Auditor's office, which would amend the securities laws to include the trading of commodity contracts and commodity dealers. He said most of the bill addresses defining commodities and dealers, and simplifies and clarifies their enforcement with respect to commodity investment contracts and commodity options.

PROPOSERS

Kim Schulke, Deputy Securities Commissioner, State Auditor's Office. Ms. Schulke presented a section by section review of the legislation and the justification for the amendments to the current statutes. Exhibit No. 4.

OPPOSERS

None.

QUESTIONS

Rep. Swysgood asked Ms. Schulke if the futures in livestock under the CME would be regulated. Ms. Schulke responded

that futures in livestock are not regulated through this legislation because they are regulated on a federal level.

Rep. Brandewie asked Ms. Schulke if the phrase "commodity means except as otherwise specified by rule or order of the committee" wasn't too broad. Ms. Schulke responded the definition of commodity in the legislation is intended to be broad to cover all types of scams that might arise.

Rep. Driscoll asked what the penalty was for the scam artists in this. She added enforcement is accomplished through a cease and desist order, the revocation, suspension, or denial of a party's license, and there are criminal penalties in the legislation to deal with those situations.

CLOSING

Senator Weeding stated that the concern of the broadness of the rule making authority on page 2 did not come up in the Senate. He said the Senate's thought was to put some faith in the Securities Commissioner, but will leave that to the Committee's judgement.

SENATE BILL 118 - Extend Penalties Against Employer Without Workers' Compensation Coverage, sponsored by Senator Mike Halligan. Senator Halligan stated this bill was at the request of the Department of Labor and Industry. He said the Department currently has both criminal and civil authority, but this bill clarifies that the Division of Workers' Compensation may concurrently pursue civil and criminal actions against an uninsured employer.

PROPONENTS

Keith Olson, Executive Director, Montana Logging Association. Mr. Olson stated that uninsured employers do a tremendous disservice, they leave injured employees in a terrible spot, and they have a very significant competitive advantage on those that are in compliance with the law.

Steven Shapiro, Chief Legal Counsel, Workers' Compensation Division. Mr. Shapiro stated the purpose of this bill was to clarify civil and criminal penalties provided in statute and provide that these penalties can be pursued concurrently, which is not clear at the present time.

OPPONENTS

None.

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 10, 1987

NAME	PRESENT	ABSENT	EXCU
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

Amendment to SB 186

Proposed by the Securities Department of the State Auditor's Office

page 12, line 9:
strike "and the investment adviser representative"

This amendment deletes the requirement that both the investment adviser firm and the investment adviser representative, inform the Securities Department when an investment adviser representative begins or terminates employment with that adviser.

Page 4, line 14
after "securities" insert "to clients"

Page 4, lines 16 and 17
delete the entire (iii)

Page 4, line 18
renumber "(iv)" to "(iii)"

Page 4, line 20
renumber "(v)" to "(iv)"

This amendment narrows the definition of investment adviser representative.

SB 186 Investment Adviser Representative Registration under the Securities Act of Montana. SECTION BY SECTION REVIEW.

Requested by State Auditor and Commissioner of Securities,
Andrea "Andy" Bennett

Section 1. Amendment to 30-10-103.

"(a) an investment adviser representative" has been added to subsection (6) to indicate that the definition of an investment adviser does not include an investment adviser representative. With this addition, the subsection has been re-lettered.

Subsection (7) has been added to define investment adviser representative. The definition includes all of those people associated with an investment adviser who give investment advice. Clerical or ministerial personnel who do not render investment advice, are not required to be registered. The section is renumbered to indicate the addition of a subsection.

Section 2. Amendment to 30-10-110.

"and investment adviser representatives" is added to the scope section of the Securities Act, to indicate that the Securities Act applies to investment adviser representatives in the same way that it applies to investment advisers.

Section 3. Amendment to 30-10-201.

"investment adviser representative" is added to subsections 1, 3, 4, 7, 10, 12, 13, 14 and 15. This is the registration section of the Securities Act. Investment adviser representatives will be registered in the same way as investment advisers.

Subsection (9) is added to provide that an investment adviser representative is not considered to be registered with the securities department unless he is associated with a registered investment adviser as specified in his application. The section is renumbered to reflect the addition of subsections (8) and (9).

Section 4. Amendment to 30-10-209.

"or investment adviser representative" is added to subsection (2)(b), to indicate that the fee for registration of an investment adviser representative is \$50.

Section 5. Extension of authority.

This section provides that the commissioner of securities may make rules on the subject of investment adviser representative registration.

Investment Adviser Representative Registration under the Securities Act of Montana. JUSTIFICATION.

Requested by State Auditor and Commissioner of Securities,
Andrea "Andy" Bennett

The Securities Act of Montana currently requires the registration of securities, broker-dealers, securities salesmen, and investment advisers. With respect to investment advisers, only the firm is required to be registered, and not the people who work for the firm and who actually give the investment advice. It is the opinion of the Securities Commissioner that these individuals, much like securities salesmen who work for broker-dealers, should be registered, and thereby fall under the supervision of the securities laws.

The amendments to the Securities Act proposed by this bill would require investment adviser representatives to register in much the same manner as securities salesmen. This registration requirement has been recommended by the North American Securities Administrators Association, an association made up of the securities commissioners of all 50 states and the provinces of Canada. Similar legislation is before the legislatures of several other states. By enacting this legislation, Montana would be furthering the policies supporting the Securities Act, namely, uniformity of state securities regulation, and protection of investors.

An example of the situation we are trying to correct is this: An employee of an investment adviser firm gives some misleading advice to a customer. The customer acts on the advice, and loses thousands of dollars. The customer complains to the securities department. The securities department contacts the investment adviser firm to question the giving of the advice. The firm indicates that it has not approved the type of advice given, and that it is therefore not responsible for the misleading advice. It may not then be reasonable for the Securities Department to suspend or revoke the license of the firm. Instead, assuming the allegations of the customer are proven to be correct, the employee of the investment adviser firm should be sanctioned. The employee currently is not required to hold a license. The Securities Department cannot take an action against a non-existent license, and the employee can continue to give investment advice. The creation of a licensing procedure will enable the Securities Department to monitor the activities of such employees, and outline certain requirements for their registration. These employees will be designated as investment adviser representatives.

There are currently no legal requirements to meet before becoming an investment adviser representative. It is the

opinion of the Securities Commissioner that reasonable requirements should be imposed so that the situation previously described either does not occur, or can be remedied if it does occur. Many of these investment adviser representatives have powers of attorney over their clients funds. The opportunity for fraud is great in such situations.

Finally, the investment adviser field is rapidly expanding. More and more people are dispensing investment advice. The securities industry is a sensitive, highly and peculiarly specialized field of activity to which the investing public is exposed and one in which the public is generally not well versed. The potential for serious financial injury to the buying public suggests that persons who dispense investment advice be required to comply with reasonable regulations in order to protect the public and the integrity of the marketplace.

IDS FINANCIAL SERVICES INC.

SUGGESTED AMENDMENTS TO MONTANA SENATE BILL 186

IDS supports the general concept of Senate Bill 186. However, we have some concerns with the proposal as introduced and offer the following amendments for improvement.

To implement our recommendations concerning the investment adviser representative definition, make the following revisions:

Section 30-10-103(7)(a) -- On page 4, line 12, after "adviser" insert "registered under the Act"; at the end of items (i), (iii)-(v) insert "to clients in this state"; and at the end of item (ii) insert "in this state".

To implement our recommendations concerning the commencement or termination of an investment adviser representative's connection with an investment adviser, make the following revision:

Section 30-10-201(9) -- On page 12, line 9, after "adviser" strike "and the investment adviser representative".

VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. SENATE BILL NO. 186DATE March 10, 1987SPONSOR Senator Bob Williams

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
J. Kim Schultze	State Auditor	V	
AG. M. B. ...	Notary Public	Amend.	
Charles ...	IDS	Amend	
Bence H. Mac ...	D. H. ...	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Rep. Swysgood asked if the fair operates to make a profit. Mr. Chiesa responded that by state law they cannot operate to make a profit, but they have to operate within their budget, and they receive tax funds. He said that during the actual 8 day event, they generate more revenue than expenses.

CLOSING

Rep. Thomas made no further comments.

EXECUTIVE ACTION

ACTION ON SENATE BILL NO. 313

Chairman Kitselman moved to reconsider action on Senate Bill No. 313. The motion carried unanimously.

Rep. Driscoll moved the amendment, on page 13, line 21, strike line 21 in its entirety, and line 22 through the word "that". The motion carried unanimously.

Rep. Driscoll moved that Senate Bill No. 313 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON SENATE BILL NO. 299

Rep. Swysgood moved that Senate Bill No. 299 BE CONCURRED IN. The motion carried unanimously.

ACTION ON SENATE BILL NO. 314

Rep. Hansen moved that Senate Bill NO. 314 BE NOT CONCURRED IN.

Rep. Thomas moved a substitute motion that Senate Bill No. 314 BE CONCURRED IN.

Rep. Brandewie commented that it was not right to save money at the expense of people that are working at \$3.60 per hour.

Rep. Bachini commented that he sees no need for the bill.

Rep. Pavlovich made a substitute motion that Senate Bill No. 314 BE TABLED. The motion carried unanimously.

ACTION ON SENATE BILL NO. 186

Rep. Thomas moved that Senate Bill No. 186 BE CONCURRED IN.

Rep. Thomas moved the amendments proposed by the Insurance Commissioner. The motion carried unanimously.

Rep. Thomas moved that Senate Bill No. 186 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

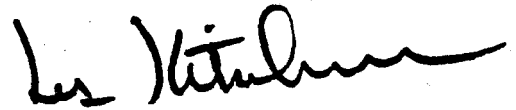
COMMITTEE RESOLUTION

Chairman Kitselman stated that it has been requested by the people concerned that the Business and Labor Committee study the lien laws, and 2/3 vote of the committee was needed to carry the resolution. He said the select committee on lien laws last year did not have time to study the particular portion regarding the agricultural liens, petroleum supplier liens, etc.

Rep. Simon moved that the Business and Labor Committee draft a study resolution for the lien laws. The motion carried with Rep. Grinde opposed.

ADJOURNMENT

The meeting adjourned at 9:20 a.m.

A handwritten signature in black ink, appearing to read "Les Kitselman", written over a horizontal line.

REP. LES KITSELMAN, Chairman

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

STANDING COMMITTEE REPORT

HOUSE

MARCH 13

19 86

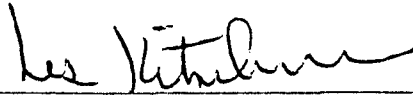
Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 186

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached



REP. LES KITSELMAN

Chairman

AMENDMENTS AS FOLLOWS:

1) Page 4, line 14
Following: "securities"
Insert: "to clients"

2) Page 4, lines 16 and 17
Strike: subsection (iii) in its entirety
Renumber: subsequent subsections

3) Page 12, line 9
Strike: "and the investment adviser representative"

Rep. Fred Thomas will sponsor

ms.
THIRD reading copy (BLUE)
color

SENATE BILL NO. 186

INTRODUCED BY B. WILLIAMS, MEYER, TVEIT, HALLIGAN

BY REQUEST OF THE STATE AUDITOR AND
SECURITIES COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
REGISTRATION OF AN INVESTMENT ADVISER REPRESENTATIVE; AND
AMENDING SECTIONS 30-10-103, 30-10-110, 30-10-201, AND
30-10-209, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through
3 of this chapter, unless the context requires otherwise,
the following definitions apply:

(1) "Commissioner" means securities commissioner of
this state.

(2) "Salesman" means any individual other than a
broker-dealer who represents a broker-dealer or issuer in
effecting or attempting to effect sales of securities. A
partner, officer, or director of a broker-dealer or issuer
is a salesman only if he otherwise comes within this
definition. "Salesman" does not include an individual who
represents an issuer in:

(a) effecting a transaction in a security exempted by

subsections (1), (2), (3), (9), (10), (11), or (12) of
30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees,
partners, or directors of the issuer if no commission or
other remuneration is paid or given directly or indirectly
for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the
business of effecting transactions in securities for the
account of others or for his own account. "Broker-dealer"
does not include:

(a) a salesman, issuer, bank, savings institution,
trust company, or insurance company; or

(b) a person who has no place of business in this
state if he effects transactions in this state exclusively
with or through the issuers of the securities involved in
the transactions, other broker-dealers, or banks, savings
institutions, trust companies, insurance companies,
investment companies as defined in the Investment Company
Act of 1940, pension or profit-sharing trusts, or other
financial institutions or institutional buyers, whether
acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer
registered pursuant to 30-10-201.

(5) "Guaranteed" means guaranteed as to payment of

1 principal, interest, or dividends.

2 (6) "Investment adviser" means any person who, for
3 compensation, engages in the business of advising others,
4 either directly or through publications or writings, as to
5 the value of securities or as to the advisability of
6 investing in, purchasing, or selling securities or who, for
7 compensation and as a part of a regular business, issues or
8 promulgates analyses or reports concerning securities.

9 "Investment adviser" does not include:

10 (a) an investment adviser representative;

11 ~~(a)~~(b) a bank, savings institution, trust company, or
12 insurance company;

13 ~~(b)~~(c) a lawyer, accountant, engineer, or teacher
14 whose performance of these services is solely incidental to
15 the practice of his profession;

16 ~~(c)~~(d) a broker-dealer;

17 ~~(d)~~(e) a publisher of any bona fide newspaper, news
18 magazine, or business or financial publication of general,
19 regular, and paid circulation;

20 ~~(e)~~(f) a person whose advice, analyses, or reports
21 relate only to securities exempted by 30-10-104(1);

22 ~~(f)~~(g) a person who has no place of business in this
23 state if his only clients in this state are other investment
24 advisers, broker-dealers, banks, savings institutions, trust
25 companies, insurance companies, investment companies as

1 defined in the Investment Company Act of 1940, pension or
2 profit-sharing trusts, or other financial institutions or
3 institutional buyers, whether acting for themselves or as
4 trustees; or

5 ~~(g)~~(h) such other persons not within the intent of
6 this subsection ~~(5)~~ (6) as the commissioner may by rule or
7 order designate.

8 (7) (a) "Investment adviser representative" means any
9 partner of, officer of, director of, or a person occupying a
10 similar status or performing similar functions, or other
11 individual employed by or associated with an investment
12 adviser, except clerical or ministerial personnel, who:

13 (i) makes any recommendation or otherwise renders
14 advice regarding securities TO CLIENTS;

15 (ii) manages accounts or portfolios of clients;

16 ~~(iii)~~ determines---which---recommendation---or---advice
17 regarding securities should be given;

18 ~~(iv)~~(III) solicits, offers, or negotiates for the sale
19 or sells investment advisory services; or

20 ~~(v)~~(IV) supervises employees who perform any of the
21 foregoing.

22 (b) "Investment adviser representative" does not
23 include an individual registered as a salesman pursuant to
24 30-10-201.

25 ~~(7)~~(8) "Issuer" means any person who issues or

1 proposes to issue any security, except that with respect to
 2 certificates of deposit, voting-trust certificates, or
 3 collateral-trust certificates or with respect to
 4 certificates of interest or shares in an unincorporated
 5 investment trust not having a board of directors (or persons
 6 performing similar functions) or of the fixed, restricted
 7 management, or unit type, the term "issuer" means the person
 8 or persons performing the acts and assuming the duties of
 9 depositor or manager pursuant to the provisions of the trust
 10 or other agreement or instrument under which the security is
 11 issued.

12 ~~(8)~~(9) "Nonissuer" means not directly or indirectly
 13 for the benefit of the issuer.

14 ~~(9)~~(10) "Person", for the purpose of parts 1 through 3
 15 of this chapter, means an individual, a corporation, a
 16 partnership, an association, a joint-stock company, a trust
 17 where the interests of the beneficiaries are evidenced by a
 18 security, an unincorporated organization, a government, or a
 19 political subdivision of a government.

20 ~~(10)~~(11) (a) "Sale" or "sell" includes every contract
 21 of sale of, contract to sell, or disposition of a security
 22 or interest in a security for value.

23 (b) "Offer" or "offer to sell" includes every attempt
 24 or offer to dispose of or solicitation of an offer to buy a
 25 security or interest in a security for value.

1 (c) Any security given or delivered with or as a bonus
 2 on account of any purchase of securities or any other thing
 3 is considered to constitute part of the subject of the
 4 purchase and to have been offered and sold for value. A
 5 purported gift of assessable stock is considered to involve
 6 an offer and sale. Every sale or offer of a warrant or right
 7 to purchase or subscribe to another security of the same or
 8 another issuer, as well as every sale or offer of a security
 9 which gives the holder a present or future right or
 10 privilege to convert into another security of the same or
 11 another issuer, is considered to include an offer of the
 12 other security.

13 ~~(11)~~(12) "Securities Act of 1933", "Securities Exchange
 14 Act of 1934", "Public Utility Holding Company Act of 1935",
 15 and "Investment Company Act of 1940" mean the federal
 16 statutes of those names as amended before or after July 1,
 17 1961.

18 ~~(12)~~(13) "Security" means any note; stock; treasury
 19 stock; bond; debenture; evidence of indebtedness;
 20 certificate of interest or participation in any
 21 profit-sharing agreement; collateral-trust certificate;
 22 preorganization certificate or subscription; transferable
 23 shares; investment contract; voting-trust certificate;
 24 certificate of deposit for a security; certificate of
 25 interest or participation in an oil, gas, or mining title or

1 lease or in payments out of production under such a title or
 2 lease; or, in general, any interest or instrument commonly
 3 known as a security or any certificate of interest or
 4 participation in, temporary or interim certificate for,
 5 receipt for, guarantee of, or warrant or right to subscribe
 6 to or purchase any of the foregoing. "Security" does not
 7 include any insurance or endowment policy or annuity
 8 contract under which an insurance company promises to pay a
 9 sum of money either in a lump sum or periodically for life
 10 or some other specified period.

11 ~~(13)~~(14) "State" means any state, territory, or
 12 possession of the United States, as well as the District of
 13 Columbia and Puerto Rico."

14 Section 2. Section 30-10-110, MCA, is amended to read:

15 "30-10-110. Scope. (1) Sections 30-10-201(1),
 16 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to
 17 persons who sell or offer to sell when an offer to sell is
 18 made in this state or an offer to buy is made and accepted
 19 in this state.

20 (2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303
 21 apply to persons who buy or offer to buy when an offer to
 22 buy is made in this state or an offer to sell is made and
 23 accepted in this state.

24 (3) For the purpose of this section, an offer to sell
 25 or buy is made in this state, whether or not either party is

1 then present in this state, when the offer either originates
 2 from this state or is directed by the offeror to this state
 3 and received at the place to which it is directed or at any
 4 post office in this state in the case of a mailed offer, but
 5 for the purpose of 30-10-202, an offer to sell which is not
 6 directed to or received by the offeree in this state is not
 7 made in this state.

8 (4) For the purpose of this section, an offer to buy
 9 or sell is accepted in this state when acceptance is
 10 communicated to the offeror in this state and acceptance has
 11 not previously been communicated to the offeror, orally or
 12 in writing, outside this state. Acceptance is communicated
 13 to the offeror in this state, whether or not either party is
 14 then present in this state, when the offeree directs it to
 15 the offeror in this state, reasonably believing the offeror
 16 to be in this state, and it is received at the place to
 17 which it is directed or at any post office in this state in
 18 the case of a mailed acceptance.

19 (5) An offer to sell or to buy is not made in this
 20 state when:

21 (a) the publisher circulates or there is circulated on
 22 his behalf in this state any bona fide newspaper or other
 23 publication of general, regular, and paid circulation which
 24 is:

25 (i) not published in this state; or

1 (ii) published in this state but has had more than
2 two-thirds of its circulation outside this state during the
3 past 12 months; or

4 (b) a radio or television program originating outside
5 this state is received in this state.

6 (6) Sections 30-10-201(3), 30-10-301(2) and (3), and
7 30-10-303, as far as investment advisers and investment
8 adviser representatives are concerned, apply when any act
9 instrumental in effecting prohibited conduct is done in this
10 state, whether or not either party is then present in this
11 state."

12 Section 3. Section 30-10-201, MCA, is amended to read:

13 "30-10-201. Registration of broker-dealers, salesmen,
14 and investment advisers, and investment adviser
15 representatives. (1) It is unlawful for any person to
16 transact business in this state as a broker-dealer or
17 salesman, except in transactions exempt under 30-10-105,
18 unless he is registered under parts 1 through 3 of this
19 chapter.

20 (2) It is unlawful for a broker-dealer or issuer to
21 employ a salesman to represent him in this state, except in
22 transactions exempt under 30-10-105, unless the salesman is
23 registered under parts 1 through 3 of this chapter.

24 (3) It is unlawful for any person to transact business
25 in this state as an investment adviser or as an investment

1 adviser representative unless:

2 (a) he is so registered under parts 1 through 3 of
3 this chapter;

4 (b) he is registered as a broker-dealer under parts 1
5 through 3 of this chapter; or

6 (c) his only clients in this state are investment
7 companies, as defined in the Investment Company Act of 1940,
8 or insurance companies.

9 (4) A broker-dealer or a salesman, acting as an agent
10 for an issuer or as an agent for a broker-dealer in the
11 offer or sale of securities for an issuer, or an investment
12 adviser or investment adviser representative may apply for
13 registration by filing an application in such form as the
14 commissioner prescribes and payment of the fee prescribed in
15 30-10-209. Except for persons in the employ of brokerage
16 firms governed by the regulations of the securities and
17 exchange commission, all salesmen must be legal residents of
18 this state and must have actually resided in this state for
19 a period of at least 1 year next prior to the date of
20 application for registration. The commissioner may, upon
21 request and for good cause shown by an applicant, waive the
22 residency requirement. Payment of the waiver fee shall be
23 as prescribed in 30-10-209. A salesman acting as agent for
24 an issuer or broker-dealer who is not currently in
25 compliance with the financial responsibility requirements

1 prescribed by the Securities Exchange Act of 1934 and by
 2 regulations adopted under it, may, in the discretion of the
 3 commissioner, be required to file with the commissioner a
 4 bond of a surety company duly authorized to transact
 5 business in this state. The bond shall be in an amount
 6 determined by the commissioner, payable to the state of
 7 Montana and conditioned upon the faithful compliance with
 8 the provisions of parts 1 through 3 of this chapter, and
 9 provide that upon failure to so comply, the salesman shall
 10 be liable to any and all persons who may suffer loss by
 11 reason thereof.

12 (5) The application shall contain whatever information
 13 the commissioner requires.

14 (6) When the registration requirements are complied
 15 with, the commissioner shall approve the registration.

16 (7) Registration of a broker-dealer, salesman, or
 17 investment adviser, or investment adviser representative
 18 shall be effective until December 31 following such
 19 registration or such other time as the commissioner may by
 20 rule adopt and may be renewed.

21 (8) The registration of a salesman is not effective
 22 during any period when he is not associated with an issuer
 23 or a registered broker-dealer specified in his application.
 24 When a salesman begins or terminates a connection with an
 25 issuer or registered broker-dealer, the salesman and the

1 issuer or broker-dealer shall promptly notify the
 2 commissioner.

3 (9) The registration of an investment adviser
 4 representative is not effective during any period when he is
 5 not associated with an investment adviser registered under
 6 this act and specified in the application. When an
 7 investment adviser representative begins or terminates a
 8 connection with an investment adviser, the investment
 9 adviser and--the--investment--adviser--representative shall
 10 promptly notify the commissioner.

11 (10) Registration of a broker-dealer, salesman, or
 12 investment adviser, or investment adviser representative may
 13 be renewed by filing prior to the expiration thereof an
 14 application containing such information as the commissioner
 15 may require to indicate any material change in the
 16 information contained in the original application or any
 17 renewal application for registration as a broker-dealer,
 18 salesman, or investment adviser, or investment adviser
 19 representative, filed by the applicant, payment of the
 20 prescribed fee, and, in the case of a broker-dealer who is
 21 not a member of NASD, inc., by filing a financial statement
 22 showing the financial condition of such broker-dealer as of
 23 a date within 90 days. A registered broker-dealer or
 24 investment adviser may file an application for registration
 25 of a successor, to become effective upon approval of the

1 commissioner.

2 {9}(11) Every registered broker-dealer and investment
3 adviser shall make and keep such accounts and other records,
4 except with respect to securities exempt under 30-10-104(1),
5 as may be prescribed by the commissioner. All records so
6 required shall be preserved for 3 years unless the
7 commissioner prescribes otherwise for particular types of
8 records. All the records of a registered broker-dealer or
9 investment adviser are subject at any time or from time to
10 time to such reasonable periodic, special, or other
11 examinations, within or without this state, by
12 representatives of the commissioner, as the commissioner
13 considers necessary or appropriate in the public interest or
14 for the protection of investors.

15 {10}(12) The commissioner may by order deny, suspend,
16 or revoke registration of any broker-dealer, salesman, or
17 investment adviser, or investment adviser representative if
18 he finds that the order is in the public interest and that
19 the applicant or registrant or, in the case of a
20 broker-dealer or investment adviser, any partner, officer,
21 or director:

22 (a) has filed an application for registration under
23 this section which, as of its effective date or as of any
24 date after filing in the case of an order denying
25 effectiveness, was incomplete in any material respect or

1 contained any statement which was, in the light of the
2 circumstances under which it was made, false or misleading
3 with respect to any material fact;

4 (b) has willfully violated or willfully failed to
5 comply with any provision of parts 1 through 3 of this
6 chapter or a predecessor law or any rule or order under
7 parts 1 through 3 of this chapter or a predecessor law;

8 (c) has been convicted of any misdemeanor involving a
9 security or any aspect of the securities business or any
10 felony;

11 (d) is permanently or temporarily enjoined by any
12 court of competent jurisdiction from engaging in or
13 continuing any conduct or practice involving any aspect of
14 the securities business;

15 (e) is the subject of an order of the commissioner
16 denying, suspending, or revoking registration as a
17 broker-dealer, salesman, or investment adviser, or
18 investment adviser representative;

19 (f) is the subject of an order entered within the past
20 5 years by the securities administrator of any other state
21 or by the federal securities and exchange commission denying
22 or revoking registration as a broker-dealer, salesman, or
23 investment adviser, or investment adviser representative or
24 the substantial equivalent of those terms as defined in
25 parts 1 through 3 of this chapter or is the subject of an

1 order of the federal securities and exchange commission
 2 suspending or expelling him from a national securities
 3 exchange or national securities association registered under
 4 the Securities Exchange Act of 1934 or is the subject of a
 5 United States post office fraud order, but:

6 (i) the commissioner may not institute a revocation or
 7 suspension proceeding under this subsection (f) more than 1
 8 year from the date of the order relied on; and

9 (ii) he may not enter any order under this subsection
 10 (f) on the basis of an order unless that order was based on
 11 facts which would currently constitute a ground for an order
 12 under this section;

13 (g) has engaged in dishonest or unethical practices in
 14 the securities business;

15 (h) is insolvent, either in the sense that his
 16 liabilities exceed his assets or in the sense that he cannot
 17 meet his obligations as they mature, but the commissioner
 18 may not enter an order against a broker-dealer or investment
 19 adviser under this subsection (h) without a finding of
 20 insolvency as to the broker-dealer or investment adviser;

21 (i) has not complied with a condition imposed by the
 22 commissioner under this section or is not qualified on the
 23 basis of such factors as training, experience, or knowledge
 24 of the securities business; or

25 (j) has failed to pay the proper filing fee, but the

1 commissioner may enter only a denial order under this
 2 subsection (j), and he shall vacate any such order when the
 3 deficiency has been corrected.

4 ~~{11}~~(13) Upon the entry of the order under subsection
 5 ~~{10}~~ (12) of this section, the commissioner shall promptly
 6 notify the applicant or registrant, as well as the employer
 7 or prospective employer if the applicant or registrant is a
 8 salesman or investment adviser representative, that it has
 9 been entered and of the reasons therefor and that if
 10 requested by the applicant or registrant within 15 days
 11 after the receipt of the commissioner's notification the
 12 matter will be promptly set down for hearing. If no hearing
 13 is requested within 15 days and none is ordered by the
 14 commissioner, the order will remain in effect until it is
 15 modified or vacated by the commissioner. If a hearing is
 16 requested or ordered, the commissioner, after notice of and
 17 opportunity for hearing, may affirm, modify, or vacate the
 18 order.

19 ~~{12}~~(14) If the commissioner finds that any registrant
 20 or applicant for registration is no longer in existence or
 21 has ceased to do business as a broker-dealer, investment
 22 adviser, or salesman, or investment adviser representative
 23 or is subject to an adjudication of mental incompetence or
 24 to the control of a committee, conservator, or guardian or
 25 cannot be located after reasonable search, the commissioner

1 may by order cancel the registration or application.

2 ~~{13}~~(15) The commissioner may, after suspending or
 3 revoking registration of any broker-dealer, salesman, or
 4 investment adviser, ~~under--subsection--(10)~~ or investment
 5 adviser representative, impose a fine not to exceed \$5,000
 6 upon such broker-dealer, salesman, or investment adviser, or
 7 investment adviser representative. The fine is in addition
 8 to all other penalties imposed by the laws of this state and
 9 must be collected by the commissioner in the name of the
 10 state of Montana and deposited in the general fund.
 11 Imposition of any fine under this subsection is an order
 12 from which an appeal may be taken pursuant to 30-10-308. If
 13 any broker-dealer, salesman, or investment adviser, or
 14 investment adviser representative fails to pay a fine
 15 referred to in this subsection, the amount of the fine is a
 16 lien upon all of the assets and property of such
 17 broker-dealer, salesman, or investment adviser, or
 18 investment adviser representative in this state and may be
 19 recovered by suit by the commissioner and deposited in the
 20 general fund. Failure of a broker-dealer, salesman, or
 21 investment adviser, or investment adviser representative to
 22 pay a fine also constitutes a forfeiture of his right to do
 23 business in this state under parts 1 through 3 of this
 24 chapter."

25 Section 4. Section 30-10-209, MCA, is amended to read:

1 "30-10-209. Fees. The following fees shall be paid in
 2 advance under the provisions of parts 1 through 3 of this
 3 chapter:

4 (1) (a) For the registration of securities by
 5 notification, coordination, or qualification, there shall be
 6 paid to the commissioner for the first year of registration
 7 a registration fee of \$200 for the first \$100,000 of initial
 8 issue or portion thereof in this state, based on offering
 9 price, plus 1/10 of 1% for any excess over \$100,000, with a
 10 maximum of \$1,000.

11 (b) Each year thereafter, a registration of securities
 12 may be renewed, prior to its termination date, for an
 13 additional year upon consent of the commissioner and payment
 14 of an additional registration fee to be computed at 1/10 of
 15 1% of the aggregate offering price of such securities which
 16 are to be offered in this state during that year, even
 17 though the maximum fee was paid the preceding year. In no
 18 event shall the additional registration fee be less than
 19 \$200 or more than \$1,000. The registration statement for
 20 such securities may be amended to increase the amount of
 21 securities to be offered.

22 (c) If a registrant sells securities in excess of the
 23 aggregate amount registered for sale in this state, the
 24 registrant may file an amendment to the registration
 25 statement to include the excess sales. If the registrant

1 fails to file an amendment before the expiration date of the
 2 registration order, he shall pay a filing fee for the excess
 3 sales of three times the amount calculated in the manner
 4 specified in subsection (1)(b). Registration of the excess
 5 securities is effective retroactively to the date of the
 6 existing registration.

7 (2) (a) For registration of a broker-dealer or
 8 investment adviser, the fee shall be \$200 for original
 9 registration and \$200 for each annual renewal.

10 (b) For registration of a salesman or investment
 11 adviser representative, the fee shall be \$50 for original
 12 registration with each employer, \$50 for each annual
 13 renewal, and \$50 for each transfer.

14 (3) For certified copies of any documents filed with
 15 the commissioner, the fee shall be the cost to the
 16 department.

17 (4) For a request for an exemption under
 18 30-10-105(15), the fee shall be established by the
 19 commissioner by rule. For a request for any other exemption
 20 or an exception to the provisions of parts 1 through 3 of
 21 this chapter, the fee shall be \$50.

22 (5) For waiver of the residency requirement of
 23 30-10-201(4), the fee shall be \$50 for each original
 24 registration.

25 (6) All fees are considered fully earned when

1 received. In the event of overpayment, only those amounts in
 2 excess of \$10 may be refunded.

3 (7) All fees, examination charges, and miscellaneous
 4 charges, except fines or penalties, collected by the
 5 commissioner pursuant to parts 1 through 3 of this chapter
 6 and the rules adopted hereunder must be deposited into the
 7 securities regulatory trust account, pursuant to 30-10-115
 8 through 30-10-118.

9 (8) All fines and penalties collected by the
 10 commissioner pursuant to parts 1 through 3 of this chapter
 11 and the rules adopted hereunder must be deposited into the
 12 general fund."

13 NEW SECTION. Section 5. Extension of authority. Any
 14 existing authority of the securities commissioner to make
 15 rules on the subject of the provisions of this act is
 16 extended to the provisions of this act.

-End-